

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3412 of 1998

to

FIRST APPEAL NO.3421 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy
of the judgement?

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 - 2 : Yes

3 to 5: No

KANUBHAI BHIKHABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HM PARIKH for Petitioners

Mr. U.A. Trivedi, AGP, for Respondent No. 1

in First Appeals Nos.3412 of 1998 to 3416 of 1998

Mr. B.D.Desai, AGP, for Respondent No. 1

in First Appeals Nos.3417 of 1998 to 3421 of 1998

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 23/11/98

1. Admitted. Mr. U.A. Trivedi, learned Assistant Government Pleader, waives service of notice on behalf of respondents in First Appeals Nos. 3412 of 1998 to 3416 of 1998. Mr. B.D. Desai, learned Assistant Government Pleader, waives service of notice on behalf of respondents in First Appeals Nos. 3417 of 1998 to 3421 of 1998. At the joint request of the learned counsel appearing for the parties, all these appeals are taken up for hearing today.

2. By means of filing these appeals under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, the appellants have challenged the legality of judgment and award dated September 19, 1997, rendered by the learned Second Extra Assistant Judge, Nadiad, in Land Acquisition Cases Nos. 961 of 1991 to 970 of 1991 and, therefore, we propose to dispose of these appeals by this common judgment.

3. The Executive Engineer, Mahi Canal, Construction Department, had proposed to the Special Land Acquisition Officer, Shedhi Irrigation Project, to acquire the lands of the appellants situated in village Sunel, Taluka Nadiad, for one of the projects relating to river Shedhi. The Special Land Acquisition Officer, Shedhi Irrigation Project, had, therefore, initiated necessary proceedings. The State Government was satisfied that the lands of the appellants were likely to be needed for the said public purpose and, therefore, Notification under Section 4 of the Land Acquisition Act, 1894 ('Act' for short) was published on August 11, 1987. The land owners, who had filed objections, were heard by the Special Land Acquisition Officer and, thereafter, a report as contemplated by Section 5(A)(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. After considering the report submitted by the Special Land Acquisition Officer, declaration under Section 6 of the Act was also made. The interested persons were thereafter served with notices under Section 9 of the Act for determination of compensation. The Special Land Acquisition Officer after considering the materials placed before him made award on November 29, 1988. The Special Land Acquisition Officer offered compensation to the appellants at the rate of Rs.200 per Are. The appellants were of the opinion that the offer made by the Special Land Acquisition Officer was inadequate and, therefore, they did not accept the same. The appellants made written applications dated March 27, 1990 to the Special Land Acquisition Officer requiring

him to refer the matter to the Court for determination of the amount of compensation. Accordingly, references were made by the Special Land Acquisition Officer to the District Court, Kheda, at Nadiad, which were numbered as Land Acquisition Cases Nos.961 of 1991 to 970 of 1991. By making reference applications, the appellants claimed compensation at the rate of Rs.1300 per Are. The reference applications were contested by the Special Land Acquisition Officer and others vide written statement Exh.6. Having regard to the averments made in the reference applications and written statement submitted by the acquiring authorities, the Reference Court framed necessary issues for determination. One of the issues raised for determination was whether the references were time barred or not. The Reference Court noted that the Special Land Acquisition Officer had made award on November 29, 1988 whereas the written applications requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of compensation were filed by the appellants on March 27, 1990. The Reference Court, therefore, held that the Special Land Acquisition Officer had no jurisdiction to refer the matters to the Court for determination of compensation, as the applications requiring the Special Land Acquisition Officer to refer the matters to the Court were not filed within six months from the date of the award of the Special Land Acquisition Officer. The Reference Court has therefore rejected the Land Acquisition Cases Nos. 961 of 1991 to 970 of 1991 by common judgment and award dated September 19, 1997, giving rise to the present appeals.

4. Mr. H.M. Parikh, learned counsel for the appellants, submitted that in reply Exh.6, which was filed by the acquiring authorities, it was not pleaded that the references were time barred and, therefore, the references should not have been dismissed as time barred. It was claimed that, when the Special Land Acquisition Officer referred the matters to the Court for determination of compensation, it was not open to the Reference Court to dismiss the references as time barred and, therefore, the impugned award should be set aside. In the alternative, it was stressed that, in view of the finding recorded by the Reference Court to the effect that the references were time barred, the Reference Court should have declined to answer the references and should not have rejected the references so as to jeopardize the rights of the appellants under Section 28A of the Act. In support of his submission, the learned counsel for the appellants placed reliance on the decisions rendered in the cases of (1) Shree Madansinhji Saheb of Kutch vs.

State of Gujarat, AIR 1963 GUJARAT 175; (2) Mohammed Hasnuddin vs. The State of Maharashtra, AIR 1979 Supreme Court 404.

5. Mr. U.A. Trivedi and Mr.B.D. Desai, learned Assistant Government Pleaders, stressed that the Court functioning under the Act being a Tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector under Section 18 of the Act complies with the conditions laid down therein so as to give the Court jurisdiction to hear the reference and, therefore, the Reference Court had jurisdiction to decide whether references were made beyond the period prescribed by the proviso to sub-section (2) of Section 18 of the Act. It was pleaded that the Court has declined to answer the references inasmuch as the Reference Court has neither held that the offer made by the Special Land Acquisition Officer is either inadequate or insufficient or that the appellants are entitled to higher compensation as claimed by them, and, having done so, the Court has passed the consequential order of rejecting the references and, therefore, the appeals should be dismissed. What was highlighted by the learned Government Counsel was that the Court has not awarded to any claimants any amount of compensation in excess of the amount awarded by the Special Land Acquisition Officer under Section 11 of the Act, so far as the lands covered by notification dated August 11, 1987 are concerned and as the appellants are not entitled to file any application under Section 28-A of the Act, the award passed by the Reference Court should be upheld.

6. We have heard the learned counsel appearing for the parties at length. In our view, there is no substance in any of the contentions urged on behalf of the appellants and the appeals cannot be entertained. The scheme of the Act is such that after hearing the interested persons, the Land Acquisition Officer has to determine market value of the lands covered by Section 4 and 6 notifications. Under Section 11 of the Act, the Land Acquisition Officer has to enquire into the objections which might have been filed by the claimants pursuant to the notice given under Section 9 of the Act and, thereafter, to determine the compensation. Thereafter, the Special Land Acquisition Officer has to make award as required by Section 11 of the Act. If any person interested has not accepted the award, he may by written application require the Collector to refer the matter to the Court for determination of the compensation. This is contemplated by Section 18(1) of the Act. However, proviso to sub-section (2) of Section

18 of the Act stipulates that, if a person making written application was present or represented before the Collector at the time when he made his award, the application requiring the Collector to refer the matter to the Court should be made within six weeks from the date of the Collector's award and in other case such application should be filed within six weeks of the receipt of the notice from the Collector under Section 12(2) or within six months from the date of Collector's award, whichever period first expires. Merely because the Collector while making award under Section 11 or in serving a notice on the owner of the land under Section 12, acts as an agent of the Government, it does not necessarily imply that while making a reference to the Court under Section 18, he acts in the capacity of an agent of the Government. Section 18(1) entrusts to the Collector the statutory duty of making a reference on fulfillment of the conditions laid down therein. The Collector, therefore, acting under Section 18 of the Act, is nothing but a statutory authority exercising his own powers under the section. The fulfillment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of Collector under Section 18 of the Act to make reference exists. The making of an application for reference within the time prescribed by proviso to Section 18(2) is a sine qua non for a valid reference by the Collector. The Court functioning under the Act being a Tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector under Section 18 complies with the conditions laid down therein so as to give the Court jurisdiction to hear the reference. In deciding the question of jurisdiction, in a case of reference under Section 18 by the Collector to the Court, the Court is certainly not acting as a court of appeal. It is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no Tribunal can possibly avoid. The Court has jurisdiction to decide whether reference was made beyond the period prescribed by the proviso to sub-section (2) of Section 18 of the Act and if it finds that it was so made, decline to answer the reference. Under the circumstances, we do not find any substance in the argument that, once the reference is made by the Collector under Section 18 to the District Court, the District Court has no jurisdiction to decide the issue whether the reference was within the limitation or whether the reference was in conformity with the provisions of Section 18 of the Act. It is true that

such a view was expressed by the learned single Judge of this Court in the case of Shree Madansinhji Saheb of Kutch (supra). However, in view of the decision of the Supreme Court in the case of Mohammed Hasnuddin (supra) to the effect that the Court has jurisdiction to decide whether the references were made beyond the period prescribed by proviso to sub-section (2) of Section 18 of the Act, and if it finds that it was so made, decline to answer reference, we are of the opinion that the view expressed by the learned single Judge is no longer a good law and the appeals cannot be entertained on the ground that, as the references were made by the Collector under Section 18 to the District Court, the District Court had no jurisdiction to decide the question whether the references were within limitation or not.

7. The contention that as plea regarding references being time barred was not raised by the acquiring authorities in the written statement, it was not open to the Reference Court to decide the question whether the references were time barred or not, cannot be accepted. As observed by the Supreme Court in Mohammed Hasnuddin (supra), the fulfillment of conditions particularly the one regarding limitation are the conditions subject to which the power of the Collector under Section 18 to make the reference exists. The making of an application for reference within the time prescribed by proviso to Section 18(2) is a sine qua non for a valid reference by the Collector and, therefore, the Reference Court is justified in considering the question whether the references are time barred or not irrespective of the fact that whether any such plea is raised in the written statement by the acquiring authorities or not. The last submission that the Reference Court having found that the references were time barred should not have rejected them and should have declined to answer the references so as not to jeopardize the rights of the appellants under Section 28 of the Act, is devoid of merits. The Reference Court having found that the references were time barred was bound to pass a consequential order rejecting the references. Therefore, the order passed by the Tribunal cannot be regarded as jeopardizing the rights of the appellants under Section 28-A of the Act. Even otherwise, we find that, in the present case, notification under Section 4 of the Act was published on August 11, 1987. There is nothing in the award passed by the Court which indicates that the Court has awarded the applicants any amount of compensation in excess of the amount awarded by the Collector under Section 11 of the Act in so far as the lands covered by this very notification are concerned. It is not the case of the

appellants that the applicants in other cases have been awarded compensation in excess of the amount awarded by the Collector under with Section 11 with reference to the lands which were subject matter of the notification issued under Section 4 of the Act on August 11,1987. Therefore, the appellants have no right to file any application under Section 28A of the Act for redetermination of the amount of compensation on the basis of the award of the Court. As observed earlier, rejection of the reference is a consequential order passed by the Reference Court after holding that the references were time barred. That order cannot be construed as jeopardizing the rights of the appellants under Section 28A of the Act and the impugned judgment and award cannot be set aside on the ground that it affects the rights of the appellants under Section 28A of the Act.

8. No other point has been urged by the learned counsel for the appellants in support of these appeals.

9. For the foregoing reasons, we do not find any substance in any of the contentions urged on behalf of the appellants and the appeals are liable to be dismissed.

10. In the result, the appeals fail and are dismissed with no order as to costs.

(swamy)